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REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS FORTY-FOURTH SESSION

Written statement submitted by the International Fellowship of Reconciliation, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement, which is distributed in accordance with Economic and Social Council resolution 1296 (XLIV).

[15 February 1993]

1. Since the forty-fourth session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the International Fellowship for Reconciliation (IFOR) has been supporting the demands directed to the Japanese Government by the Korean Council for Women Drafted for Sexual Slavery by Japan during the Second World War. IFOR appreciates and firmly supports, in relation to this very important issue, sexual slavery of Korean women by Japan, draft decisions 1 and 8 proposed by the Sub-Commission to the Commission on Human Rights for action (see E/CN.4/1993/2-E/CN.4/Sub.2/1992/58, chap. I, sect. B, draft decision 1, entitled "Report of the Working Group on Contemporary Forms of Slavery" and draft decision 8, entitled "The right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms).

2. IFOR would wish the Commission to give appropriate consideration to the following points. The Japanese Government's representatives, in reply to criticisms made by non-governmental organizations, have inevitably made the same reply, namely that the Japanese Prime Minister apologized during his visit to the Republic of Korea in January 1992. IFOR feels that this apology is inadequate as it does not deal with the basic questions involved for the following reasons:

(a) Japan has been refusing to accept the fact that the sexually enslaved Korean women were coerced. It was not a freely granted service offered to Japanese soldiers, but it was an aggravated form of continuous rape of enormous numbers of Korean women and girls, under the supervision of the Japanese Government, committed by an overwhelming majority of the Japanese Imperial Forces. IFOR would like to request the Japanese Government to give good reason why the Prime Minister, Mr. Kiichi Miyazawa, made an apology, if those women and girls were not coerced. Why was it necessary for him to apologize if all was on a voluntary basis? Based on various information obtained, the only conclusion that can be made is that the Korean women were victims who were in fact coerced into sexual slavery and they never volunteered.

(b) It is understood that the Japanese Government, before the Tokyo District Court, is demanding that some of the surviving Korean women victims of sexual slavery prove the unlawfulness of the enslavement under the Japanese law of that time.

3. IFOR wishes to focus on point (b). In our opinion, it is the Japanese Government's duty to prove the reason why this enslavement was lawful under international law. It was done using coercion and violating international law, even if the Japanese law legalized the enslavement of the victims. This is one of the important principles which was confirmed by the Nuremberg and Far East Military Tribunals. Even if one supposes that the Japanese Government's argument is right concerning the lawfulness of the acts under Japanese law, this is meaningless. IFOR believes that the Japanese law as a whole, which was applied on the Korean Peninsula during the time of the Japanese occupation was null and void under international law.

4. This issue seems not to have been seriously discussed as yet by Japanese lawyers. Korea was a sovereign Empire in 1905. Japan demanded that Korea should accept the Japanese proposal of a protectorate treaty. The Korean Empire, however, resisted the Imperial Japanese Government's demand to be a protectorate of Japan. According to historians, "Japan sent its elder statesman, Ito Hirobumi, to conclude the protectorate treaty. Ito entered the palace with an escort of Japanese troops, threatened Kojong and his ministers, and demanded that they accept the draft treaty Japan had prepared. When the Korean officials refused, Prime Minister Han Kyu-sol, who had expressed the most violent opposition, was dragged from the chamber by Japanese gendarmes. Japanese soldiers then went to the foreign ministry to bring its official seal, which then was affixed to the document by Japanese hands, on 17 November 1905." (Ecker, C.J. et al., Korea Old and New a History, 1990, Harvard University Press, p. 239). The treaty was signed by the then Korean Foreign Minister and it was not ratified by both Emperors.

5. The treaty consisted of five provisions that deprived Korea of its sovereignty and independence and made a Resident General, appointed by the Japanese Emperor, the substantial ruler of Korea. Article 1 of the treaty states "The Government of Japan, through the Department of Foreign Affairs at Tokyo, will hereafter have control and direction of the external relations and affairs of Corea ...". Article 2 prohibited Korea from concluding "any act or engagement having an international character except through the medium of the Government of Japan". Article 3 stipulated "The Government of Japan shall be represented at the Court of His Majesty the Emperor of Corea by a Resident General, who shall reside at Seoul, primarily for the purpose of taking charge of and directing matters relating to diplomatic affairs ...". Hereafter, despite desperate attempts by Emperor Kojong, Korea's requests for help from the Western nations or the international community to recover independence were all ignored and failed. Because of this treaty, even Emperor Kojong's cabinet meetings and decisions were dominated by Resident General Ito. The Resident General forced Emperor Kojong to abdicate in favour of his son in 1907.

6. IFOR believes that this treaty did not take effect because of the following reasons:

(a) The report of the United Nations International Law Commission (1963, Part II, p. 197) states "There appears to be general agreement that acts of coercion or threats applied to individuals with respect to their own persons or in their personal capacity in order to procure the signature, ratification, acceptance or approval of a treaty will necessarily justify the State in invoking the nullity of the treaty." This statement as regards customary international law was supported generally by international lawyers since the nineteenth century. In fact, article 51 of the Law of Treaties later confirmed that such a consent to treaty obtained by coercion to individuals did not take any effect. Article 51 provides "the expression of a State's consent to be bound by a treaty which has been procured by the coercion of its representative through acts or threats directed against him shall be without legal effect". Moreover, the United Nations International Law Commission raised the case of the 1905 Protectorate Treaty of Korea by Japan as one of the four major examples of this kind in history where treaties did not take any effect because of coercion of representatives (op. cit.).

(b) As a result, IFOR believes that Japan may not deny that the 1905 Protectorate Treaty forced on to Korea by Japan did not take any effect. The legitimacy of the Japanese colonial rule and the Japanese Imperial law, which was applied later in Korea was based on this Treaty and another treaty in 1910. By the latter, Korea was annexed to Japan. The first Japanese law which was enforced by Japan seemed to be the Imperial Ordinance proclaimed by the Japanese Emperor in 1905 to establish the Resident General system in Korea based on the Protectorate Treaty.

(c) The 1910 treaty was concluded between the then Prime Minister of Korea, instructed by the then Resident General, and the same Resident General who represented the Japanese Empire. The same person, namely the Resident General, concluded the 1910 treaty, substantially representing both nations Japan and Korea. The consent was not given by the former Emperor Kojong, who was illegally deprived of his Empire's sovereignty and independence by Japan.

His sovereignty must have existed, legally speaking under international law, as the 1905 treaty did not actually take any effect at all. This Resident General was to be regarded as non-existent under international law, as the 1905 treaty which created this did not take effect. As a result, this 1910 treaty which was based on his de facto ruling power produced by the 1905 Treaty should be regarded as null and void and had no legal effect at all.

(d) Thus, the legal basis of the Japanese colonial rule from 1905 to August 1945 when Japan surrendered its power to the United Nations did not exist under international law. As a result, we must conclude that all of the then Japanese laws and regulations inflicted by Japan on the Korean Peninsula over the Korean People did not take any legal effect under international law. Then, one may see the conclusion that all drafting of Korean men and women by the then Japanese law for any work or services including military service was illegal. How can Japan claim that Korean comfort women and Korean men and women victims of forced labour were lawfully drafted? It is Japan which should prove the legitimacy and lawfulness under international law of enslaving those victims.

7. IFOR urges Japan to admit its legal responsibility on the issues as regards the gross violations of human rights of those Korean victims and pay full compensation to all of the victims on the basis of thorough fact-finding, which was not yet done by Japan.

8. IFOR requests the Commission on Human Rights to endorse draft decisions 1 and 8 of the Sub-Commission.

9. IFOR further requests all the United Nations human rights bodies to continue and strengthen their actions to solve these unprecedented gross violations of human rights, including fact-finding and other vigorous intervention by the United Nations.